

Daniel P. Watkins (admitted *pro hac vice*)  
Megan L. Meier (admitted *pro hac vice*)  
Amy McCann-Roller (admitted *pro hac vice*)  
MEIER WATKINS PHILLIPS PUSCH LLP  
919 18th Street NW, Suite 650  
Washington, DC 20006  
Telephone: (202) 318-3655

*Attorneys for Plaintiff Kytch, Inc.*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

KYTCH, INC.,

Plaintiff,

v.

MCDONALD'S CORPORATION,

Defendant.

No. 23-CV-01998-TSH

**PLAINTIFF KYTCH, INC.'S NOTICE OF  
MOTION AND MOTION TO STRIKE  
NONPARTY CLARE LOCKE LLP'S  
IMPROPER FILINGS; MEMORANDUM OF  
POINTS AND AUTHORITIES;  
DECLARATION OF JEREMY O'SULLIVAN**

1 **TO THE COURT, ALL PARTIES AND THEIR COUNSEL, AND CLARE LOCKE LLP:**

2 **PLEASE TAKE NOTICE** that Plaintiff Kytch, Inc. moves to strike Clare Locke LLP's  
3 Notice of Attorney Lien [Dkt. No. 49] and a Notice of Objection to Dismissal in Light of Attorneys'  
4 Lien [Dkt. No. 54] (collectively, the "Improper Filings"). This motion is made on two grounds. **First**,  
5 Clare Locke is a nonparty and did not seek to intervene in this case pursuant to Federal Rule of Civil  
6 Procedure 24. **Second**, the Court should exercise its inherent authority to strike from the docket Clare  
7 Locke's premature attempts to enforce a lien against a settlement that doesn't yet exist.

8 This motion is based on this notice of motion, the attached memorandum of points and  
9 authorities, the Declaration of Jeremy O'Sullivan, and on any further argument and evidence as may  
10 be presented to the Court at or before the date of the hearing on this motion.

11  
12 Dated: April 11, 2024

Respectfully submitted,  
FOR PLAINTIFF KYTCH, INC.

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15 /s/ Daniel P. Watkins

16 DANIEL P. WATKINS  
17 Meier Watkins Phillips Pusch LLP  
18 *Attorney for Plaintiff Kytch, Inc.*  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Clare Locke LLP is not a party, and it has not represented a party in this case since Kytch  
3 terminated the law firm for cause on October 14, 2023. (O’Sullivan Decl. ¶ 5.) Nevertheless, nonparty  
4 Clare Locke has filed a Notice of Attorney Lien [Dkt. No. 49] and a Notice of Objection to Dismissal  
5 in Light of Attorneys’ Lien [Dkt. No. 54] (collectively, the “Improper Filings”). The Court should  
6 exercise its inherent authority to strike both filings because they are premature—there is no settlement  
7 so Clare Locke’s putative claims against Kytch are not ripe, and no party has moved to dismiss this  
8 litigation—and because Clare Locke lacks standing to have any role in this litigation.

9 **BACKGROUND**

10 Kytch retained Clare Locke LLP to represent the company back in November 2020 in its  
11 dispute with McDonald’s, Taylor Company, TFGGroup LLC, and J. Tyler Gamble (collectively  
12 “Defendants”). (O’Sullivan Decl. ¶ 3.) Kytch filed lawsuits against Defendants that are currently  
13 pending in this action, in the Superior Court for Alameda County (Case No. RG21099155), and the  
14 Court of Appeals for the Third Circuit (Case No. 23-1810) (the “Litigations”).

15 In August 2023, Daniel P. Watkins—who had spent the previous three years leading Kytch’s  
16 litigation efforts—resigned from Clare Locke and founded his own law firm, Meier Watkins Phillips  
17 Pusch LLP. (O’Sullivan Decl. ¶¶ 4-5.) Kytch was represented by both law firms until the tech startup  
18 fired Clare Locke for cause on October 14, 2023. (*Id.* ¶ 5.)

19 Five days later, Clare Locke filed a Motion to Withdraw as Counsel, which the Court granted  
20 on October 19, 2023. [Dkt. No. 48.] Despite not being a party and no longer being counsel of record,  
21 on November 27, 2023, Clare Locke filed a “Notice of Claim of Lien for Attorney Fees” related to  
22 Kytch’s claims in this case.

23 On March 14, 2024, the parties attended mediation, as ordered by the Superior Court for  
24 Alameda County, and reached a tentative settlement. The next day, the parties filed a Stipulation to  
25 Stay Action based on the result of their mediation [Dkt. No. 52], which the Court entered the following  
26 day [Dkt. No. 53]. The parties are continuing to finalize settlement terms as of this filing.

1 On March 25, 2024, nonparty Clare Locke filed a Notice of Objection to Dismissal in Light of  
2 Attorneys' Lien. In its papers, Clare Locke complains that it "was not consulted about any settlement"  
3 that the parties were continuing to negotiate, and it insisted that this Court "deny any request for  
4 dismissal or other settlement approval" until after "Clare Locke's attorneys' liens have been resolved."  
5 [Dkt. No. 54 at 2-3.]

6 It is true, no one has "consulted" with Clare Locke about the litigations for months.<sup>1</sup> Because  
7 it is not counsel to any party. Indeed, Clare Locke deposed only three witnesses in this case – each  
8 was conducted by Daniel P. Watkins. (O'Sullivan Decl ¶ 6.) In the months that followed Mr. Watkins's  
9 resignation, the parties deposed dozens of witnesses from California to Florida, they exchanged  
10 substantial written discovery and produced hundreds of thousands of pages of documents, and they  
11 filed and briefed several motions for summary judgment. (O'Sullivan Decl. ¶ 7.) Discovery in the  
12 Alameda County Action is practically complete.

13 Clare Locke never moved to intervene under Federal Rule of Civil Procedure 24, and the Court  
14 has not permitted Clare Locke to make filings in this case or to otherwise appear since the law firm  
15 was terminated last fall. For these reasons, Kytch respectfully requests that the Court enter an Order  
16 striking Clare Locke's Improper Filings from the docket.

## 17 ARGUMENT

### 18 I. Clare Locke Has No Role in This Litigation and Its Filings Are a Legal Nullity.

19 Clare Locke was terminated and withdrew from this litigation back in October 2023.  
20 (O'Sullivan Decl. ¶ 5); [Dkt. No. 48.] The law is clear: it is reversible error for a court to permit  
21 nonparties to participate in an action absent a formal motion for intervention and the requisite findings  
22 on such a motion. *Eisenbise v. Crown Equip. Corp., Inc.*, No. 15-CV-972-AJB-WVG, 2015 WL  
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25 <sup>1</sup> But it's not because Kytch intends to do anything improper; to the contrary – Kytch has agreed to  
26 refrain from disbursing any funds it receives in connection with resolving this case for 45 days *and* it  
27 has agreed to work with Clare Locke to enter into an escrow agreement for a portion of such funds  
28 until Clare Locke's potential entitlement to fees or expenses is resolved. (O'Sullivan Decl. ¶¶ 8-9.)

1 13828753, at \*3 (S.D. Cal. Dec. 7, 2015) (citing *Spangler v. Pasadena City Bd. Of Educ.*, 552 F.2d  
2 1326, 1329 (9th Cir. 1977)). Clare Locke has not filed such a motion, so its Improper Filings lack legal  
3 effect.

4 **II. The Court Should Exercise Its Inherent Power to Strike Clare Locke's Filings.**

5 District courts "have the inherent power to control their docket." *Jones v. Metro. Life Ins. Co.*,  
6 No. C-08-03971-JW DMR, 2010 WL 4055928, at \*6 (N.D. Cal. Oct. 15, 2010). This includes the  
7 authority to strike inappropriate items from the docket. *Id.* Here, nonparty Clare Locke has filed  
8 objections and urged the Court to prohibit the parties from dismissing this case after it settles. But the  
9 litigation has not settled. And no party has filed a motion to dismiss.

10 **CONCLUSION**

11 For these reasons, the Court should strike nonparty Clare Locke's Improper Filings.

12  
13 Dated: April 11, 2024

Respectfully submitted,

14 FOR PLAINTIFF KYTCH, INC.

15  
16 /s/ Daniel P. Watkins

17 DANIEL P. WATKINS  
18 Meier Watkins Phillips Pusch LLP  
19 *Attorney for Plaintiff Kytch, Inc.*

20 **CERTIFICATE OF SERVICE**

21 I, hereby certify that, on April 11, 2024, I electronically filed the foregoing with the Clerk of  
22 the Court using the CM/ECF system, which will send notification to counsel of record.

23 Dated: April 11, 2024

24 /S/ Daniel P. Watkins

25 Daniel P. Watkins  
26 Meier Watkins Phillips Pusch LLP  
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